

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

EDWIN ALAMO, JR., JOSEPH ORENCO,
JR., and CHARLES BERARD,
Defendants.
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ORDER

S2 22 CR 252 (VB)

Pending before the Court is defendant Charles Berard's motion to suppress evidence obtained as a result of a warrantless traffic stop of Berard's 2019 Toyota 4Runner on May 10, 2022. Berard's motion was filed July 5, 2023 (Doc. #77), and the government timely filed its opposition on August 14, 2023 (Doc. #80). Berard's reply was due August 24, 2023, but no reply has been filed. (Doc. #75). A pretrial conference or hearing is scheduled for September 14, 2023, at 10:00 a.m., in Courtroom 620 at the White Plains courthouse.

Berard contends an evidentiary hearing is necessary to "develop the facts supporting his claim" that the traffic stop was unconstitutionally prolonged. (Doc. #77 at 16). The government responds that an evidentiary hearing is not necessary because there is no material factual dispute that needs to be addressed.

In particular, the government asserts that law enforcement's "pre-stop investigation provided well beyond reasonable suspicion that the 4Runner and Berard were involved in narcotics trafficking" before the traffic stop at issue—and proffers evidence in support of that assertion—and thus that the "allowable duration of the stop is determined by the time necessary to complete the investigative steps for the narcotics investigation, not the time necessary to take steps related to a traffic violation." The government goes on to say that because Berard fails to address the evidence of his participation in drug trafficking prior to the traffic stop, and has not disputed any material fact in connection with the traffic stop itself, his motion should be denied without a hearing. (Doc. #80 at 10-11).

The government is correct that Berard's motion does not address the evidence of drug trafficking gathered by law enforcement prior to the traffic stop, and that Berard concedes the 4Runner was pulled over after it changed lanes without signaling, in violation of the New York Vehicle and Traffic Law. Berard had two opportunities to address the evidence gathered before the traffic stop—in his initial motion papers and in a reply. However, he did not do so in his initial motion, and he did not file a reply. Thus, based on the present record, it appears there is no material fact in dispute that requires an evidentiary hearing.

Nevertheless, in an effort to ensure a complete record, the Court sua sponte extends Berard's deadline to file a reply to September 8, 2023. To be clear, if Berard wishes to file a reply—specifically, to address the government's proffer of evidence of Berard's participation in

drug trafficking prior to the traffic stop—he must do so by September 8, 2023. No further extension will be granted.

Under the circumstances, the Court will not conduct an evidentiary hearing on September 14, 2023, although it may do so a later date. The pretrial conference shall proceed as scheduled on September 14 at 10:00 a.m., at which time the Court will address the question of whether an evidentiary hearing is necessary and appropriate.

Because a change of plea hearing as to defendant Orengo has been scheduled for September 20, 2023, the appearance of Orengo and his counsel at the September 14 conference is excused. Defendant Alamo and his counsel shall appear at the September 14 conference.

The Court notes that the contact information on the ECF docket for Berard's counsel, Ms. Chorny, including her street address, telephone number, and email address, appears to be incorrect. Accordingly, Chambers will email this Order to Ms. Chorny at the following address: samanthachorny@smc.law. Ms. Chorny is directed to immediately update her contact information on the ECF docket.

Dated: September 1, 2023
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge